

REMARKS

In the Office Action mailed November 17, 2006, claims 1–33 are pending and stand rejected. Claims 1–33 stand rejected under 35 U.S.C. 101 for being non-statutory as not being useful. Claims 19–32 stand rejected under 35 U.S.C. 112, second paragraph as being indefinite. Claims 1–33 would be allowable if rewritten or amended to overcome the objections.

Applicant appreciates the time of Examiner Jackson during the telephonic interview conducted with the undersigned on March 20, 2007, during which the § 101 and related § 112 rejections were discussed. No agreement was reached.

Applicant traverses the § 101 rejections and amends claim 19 to address the § 112 rejections of claims 19–32. No new matter is added.

The Claims Recite Statutory Subject Matter

The claims are rejected under § 101 and § 112 for lacking utility. One skilled in the art, however would clearly appreciate the utility of the claimed subject matter. Each of the independent claims (i.e., claims 1, 17, 19, and 33) recites a method step, program code, an apparatus component, or a system component for configuring a network device to form path for communicating light, optical energy, or light pulses through a network. With the prevalence of optical communication, one skilled in the art would recognize the utility of methods, software code, systems and apparatus that include the generation of a path for transmitting light. Such path configuration also constitutes a tangible result. For these reasons, Applicant requests reconsideration of the § 101 and § 112 rejections of claims 1–33.

The Action Fails to Satisfy the Requirements For a Prima Facie Case of Lack of Utility

According to MPEP § 2107(II)(c),

Any rejection based on lack of utility should include a detailed explanation why the claimed invention has no specific and substantial credible utility. Whenever possible, the examiner should provide documentary evidence regardless of publication date (e.g., scientific or technical journals, excerpts from treatises or books, or U.S. or foreign patents) to support the factual basis for the *prima facie* showing of no specific and substantial credible utility. If documentary evidence is

not available, the examiner should specifically explain the scientific basis for his or her factual conclusions.

The Action fails to provide the requisite evidence or explanation. Instead, the Action, in providing a blanket rejection of claims 1-33, merely states that "performing measurement of light is not useful under 101." The Action fails to include any documentary evidence or scientific basis for this conclusion, as is required under MPEP § 2107. Therefore, Applicant requests reconsideration and withdrawal of the § 101 and § 112 rejections of claims 1-33. If the Examiner intends to maintain these rejections, Applicant respectfully requests the Examiner include evidence or a scientific basis for the assertion that the claims lack utility as is explicitly required by the MPEP to make such a rejection.

In view of the above amendment, Applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response other than that set forth on the enclosed fee transmittal. However, if a fee is due, please charge our Deposit Account No. 18-1945, under Order No. BBNT-P01-134 from which the undersigned is authorized to draw.

Dated: April 17, 2007

Respectfully submitted,

By 

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